

# IN THE MICHIGAN COURT OF APPEALS

## ORDER

Re: **Kmart Corporation v Capital One Financial Corp**  
Docket No. **267130**  
L.C. No. **03-055092-CK**

Michael J. Talbot, Judge, acting under MCR 7.211(E)(2), orders:

The motion to file the application under seal is DENIED. Having read the defendant-appellant's application and plaintiff-appellee's answer, it does not appear that the contractual provisions discussed in the pleadings amount to proprietary information, contrary to the assertion in the motion. Furthermore, defendant-appellant failed to establish that there is not a less restrictive means to adequately and effectively protect the documents attached to the application that were filed under the stipulated protective order signed by the parties and the trial court. Notably, the protective order appears to simply allow the parties complete discretion to designate documents as "confidential" or "highly confidential." The motion to seal fails to discuss or provide any findings made by the trial court regarding good cause and whether the contractual provisions discussed in the application are indeed non-public proprietary information. See MCR 2.302(C).

The exhibits attached to the application that were filed under seal in the trial court, specifically exhibits 2, 3, 5, and 6, will remain in sealed form in this Court's file and the public will not have access to these documents without filing an appropriate motion. MCR 7.211(C)(9)(b).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 02 2006

Date

*Sandra Schultz Mengel*  
Chief Clerk